IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.309 of 2004

Commissioner of Income Tax-I,
Chennai. Appellant

v.

M/s. Vijayashree Finance and
Investment Co. Pvt. Ltd.,
Chennai. Respondent

Tax Case Appeal filed under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench in ITA No.894/Mds/95 dated 29.05.2003 for the assessment year 1990-91 against the order of the Commissioner of Income Tax (Appeals) IV, Madras 600 034 dated 28.10.1994 and made in I.T. Appeal No. 80/93-94 against the order of the Assistant Commissioner, Company Circle IV (5) Madras 6 dated 3.3.1993 and made in PAN/GIR.No.47-066-C7-4678/22-V for the assessment year 90-91.

For Appellant : Mr.N.Muralikumaran,
St. Standing Counsel for IT Dept.
For Respondent : Mr.Venkatanarayanan

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JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

By framing the following two substantial questions of law, the revenue has filed the present appeal :

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1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the profit on sale of land carried to capital reserve cannot be added to book profit under section 115J?
2. Whether in the facts and in circumstances of the case, the Tribunal was right in holding that since notes form part of the accounts, even where profits of a non recurring nature have not been made part of the book profits, although the schedule VI stipulates the same, the assessing officer cannot add the same to re-work the book profit?

2. The facts culminating in filing of the appeal are as follows :

The assessee is a company in which public are not substantially interested. As provided under section 115J of the Act, the assessing officer found that the assessee has transferred the amount of Rs.10,17,207/- realised from the sale of the land to 'capital reserve' and did not form part of the book profit. The assessing officer added the profits from the sale of the land to the book profits while making computation under section 115J of the Income Tax Act.

3. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who by upholding the order of the assessing officer dismissed the appeal. The assessee carried the matter on appeal before the Income Tax Appellate Tribunal. By reason of the impugned order, the Tribunal allowed the appeal. The correctness of the same is now canvassed before this Court by the revenue.

4. Learned counsel on either side submit that the issue is covered in favour of the assessee, in the light of the decision in the case of Apollo Tyres Ltd. v. Commissioner of Income Tax, (2002) 255 ITR 273 (SC), which has also been followed by a Division Bench of this Court in T.C. (A) No.1104 of 2007 decided on 06.08.2007 in the case of CIT v. Kovai Maruthi Paper & Board P. Ltd.

5. The apex Court in the above cited decision has held that the assessing officer, while computing the income under section 115J of the Act has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The assessing officer, thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except the extent provided for in the explanation to section 115J of the Act.

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6. In the light of the exposition of law in respect of the jurisdiction of the assessing officer, which has been over-reached in this case, we are of the view that the order of the assessing officer is hit by the ratio laid down in the case of Apollo Tyres cited supra and the Tribunal has rightly reversed it. We do not find any ground to interfere with the order of the Tribunal. The appeal is dismissed. No costs.

Mf

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   III Floor, Rajaji Bhavan,
   Besant Nagar Chennai 90.

2. The Commissioner of Income-tax (Appeals) IV,
   Madras 34.

3. The Assistant Commissioner, Company Circle IV (5)
   Madras 6.

4. The Commissioner of Income Tax I,
   Chennai.

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